

REMARKS

Claims 14-26 are selected for prosecution. Examiner's assistance during the April 6, 2005 telephone conference is greatly appreciated.

Claim 14 has been amended to more clearly define the claimed invention.

Claims 14-26 have been rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

In response, independent claim 14 has been amended to make it clear that the claimed method is implemented using a computer system.

Claims 14, 15, 17, 20, 24 and 25 have been rejected under 35 U.S.C. 102(b) as being anticipated by Bailey Jr. et al. Claims 16, 18, 19, 22 and 26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. Claims 21 and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. in view of Weaver.

As demonstrated below, independent claim 14, as amended, is defined over the reference.

Claim 14, as amended, recites a method of selling goods, comprising the steps of:

obtaining individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs,

assigning by a computer system to the customer the category that corresponds to a human model having similar individual characteristics as the customer,

determining by the computer system evaluation marks for the goods in the category assigned to the customer, the evaluation marks being pre-set based on evaluating the goods tried on by the respective model,

pre-selecting by the computer system based on the determined evaluation marks, a group of items among the goods in the category assigned to the customer, and

enabling the customer to access said group of items.

Hence, the claim recites pre-selecting by a computer system a group of items among all items in a certain category based on the evaluation marks to enable a customer to select a required item among items of this smaller group pre-selected based on the evaluation marks. Hence, the system facilitates selection of items in an electronic shopping system having a large number of items in each category.

The Examiner has taken the position that Bailey Jr. et al. discloses the steps of claim 14. In particular, the Examiner has relied upon the paragraph bridging pages 6 and 7, and the next paragraph.

Considering the reference, Bailey Jr. et al. discloses a website for selling **custom-tailored** clothing (see the first full paragraph in the last column of page 6). The website gives access “to a wide variety of catalogues containing clothes in various styles. Clothing is projected as a 3D model that can be rotated for multiple views on the customer’s own home computer. Video and sound clips are available to display and describe the clothing on human models with varying physical characteristics. This display allows the customer to gain a better idea of how the clothing might look on them.” (the paragraph bridging pages 6 and 7).

“Having selecting some clothes, the customer is asked to make choices about materials, colors, style options, and body measurements. Based on this data, the resulting garment is presented for inspection on an appropriately proportioned computer generated model. If the customer finds the garment acceptable, he or she initiates the purchase...” (the first full paragraph on page 7).

Accordingly, the reference does not disclose determining to which category in a pre-set classification of goods the customer belongs, and assigning to the customer the category that corresponds to a human model having similar individual characteristics as the customer.

As shown above, the reference does not expressly teach determining a category corresponding to a human model having similar individual characteristics as the customer. Moreover, the reference also does not inherently disclose this feature.

It is reminded that to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probability or possibilities. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Applicant submits that the Bailey system does not need to determine a category corresponding to a human model having similar individual characteristics as the customer. The reference only suggests using images of human models to give the customer “a better idea of how the clothing might look on them.” Therefore, one skilled in the art would have no reason to conclude that the Bailey system necessarily determines a category corresponding to a human model having similar individual characteristics as the customer, as claim 14 requires.

Further, the reference neither expressly nor inherently discloses pre-selecting by the computer system a group of items among the goods in a particular category based on the determined evaluation marks, which are pre-set based on evaluating the goods tried on by the model representing this particular category.

Instead the reference indicates that a customer selects some clothes among all items presented in the shopping system.

It is well settled that anticipation, under 35 U.S.C. § 102, requires that each element of a claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir.

1983); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1920 (Fed. Cir. 1989) *cert. denied*, 110 S.Ct. 154 (1989).

As demonstrated below, the reference neither expressly nor inherently discloses the claimed invention. Therefore, claim 14 is not anticipated by Bailey, Jr. et al. within the meaning of 35 U.S.C. 102.

Also, it is noted that the subject matter of claim 14 is not obvious over the reference because Bailey Jr. et al. teaches away from the claimed invention thereby constituting **evidence of nonobviousness**. *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986); *In re Marshall*, 578 F.2d 301, 198 USPQ 344 (CCPA 1978).

In particular, as discussed above, Bailey Jr. et al. discloses a website for selling custom-tailored clothing using video clips that show clothing on human models. These video clips are used by a customer to select clothes **among all items available on the website**.

Hence, instead of using human models for evaluating goods in order to pre-select a smaller group of items for customer's consideration, Bailey Jr. et al. suggests using video clips as a replacement of a regular fashion show.

Dependent claims 15-26 are defined over the prior art at least for the reasons presented above in connection with claim 14.

Accordingly, claims 14-26 are considered to be in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

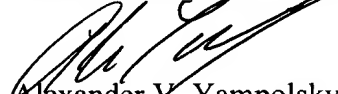
If there are any outstanding issues which might be resolved by an interview or an examiner's amendment, Examiner is respectfully requested to call Applicant's representative at the telephone number shown below.

Application No.: 09/891,321

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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